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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

10 VINCE BONATO, Individually and on Behalf) No. 11-cv-02732-CRB
of All Others Similarly Situated,)
11 Plaintiff,) CLASS ACTION
12 vs.) THE PENSION TRUST FUND FOR
13 YAHOO! INC., et al.,) OPERATING ENGINEERS' NOTICE OF
Defendants.) MOTION AND MOTION FOR
14) APPOINTMENT AS LEAD PLAINTIFF
15) AND FOR APPROVAL OF LEAD
PLAINTIFF'S SELECTION OF LEAD
COUNSEL; MEMORANDUM OF LAW IN
SUPPORT THEREOF

DATE: September 9, 2011
TIME: 10:00 a.m.
CTRM: 6

1 **NOTICE OF MOTION AND MOTION**
 2 **AND STATEMENT OF COURT ACTION SOUGHT**

3 TO: ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD

4 PLEASE TAKE NOTICE that on September 9, 2011, at 10:00 a.m., or as soon thereafter as
 5 the matter may be heard in Courtroom 6 of the Honorable Charles R. Breyer, the Pension Trust Fund
 6 for Operating Engineers (the “Pension Trust Fund”) will move this Court pursuant to the Private
 7 Securities Litigation Reform Act of 1995 (“PSLRA”), 15 U.S.C. §78u-4(a)(3)(B), for an order: (1)
 8 appointing the Pension Trust Fund as lead plaintiff; and (2) approving its selection of Robbins Geller
 9 Rudman & Dowd LLP (“Robbins Geller”) as lead counsel. This Motion is made on the grounds that
 10 the Pension Trust Fund is the “most adequate plaintiff” to serve as lead plaintiff. In support of this
 11 Motion, the Pension Trust Fund respectfully submits herewith a Memorandum of Law and
 12 Declaration of Danielle S. Myers (“Myers Decl.”).

13 **MEMORANDUM OF POINTS AND AUTHORITIES**

14 **I. INTRODUCTION**

15 Presently pending in this district is a securities class action lawsuit on behalf of all purchasers
 16 of Yahoo! Inc. (“YHOO” or the “Company”) common stock between April 19, 2011 and May 13,
 17 2011 (the “Class Period”) against YHOO, the Company’s CEO Carol A. Bartz, and Chief Yahoo and
 18 director Jerry Yang for violations of the Securities Exchange Act of 1934 (the “1934 Act”). In
 19 securities class actions, the PSLRA requires district courts to “consider any motion made by a
 20 purported class member” and “appoint as lead plaintiff the member or members of the purported
 21 plaintiff class that the court determines to be most capable of adequately representing the interests of
 22 class members.” 15 U.S.C. §78u-4(a)(3)(B)(i).

23 The Pension Trust Fund should be appointed as lead plaintiff because: (1) it timely filed this
 24 Motion; (2) to its counsel’s knowledge, it has the largest financial interest in the relief sought by the
 25 class; and (3) it will fairly and adequately represent the interests of the class. *See* 15 U.S.C. §78u-
 26 4(a)(3)(B)(iii). In addition, the Pension Trust Fund’s selection of Robbins Geller as lead counsel for
 27 the class should be approved. *See* 15 U.S.C. §78u-4(a)(3)(B)(v).

1 **II. STATEMENT OF ISSUES TO BE DECIDED**

2 1. Whether the Court should appoint the Pension Trust Fund as lead plaintiff pursuant to
 3 15 U.S.C. §78u-4(a)(3)(B); and

4 2. Whether the Court should approve of the Pension Trust Fund's selection of Robbins
 5 Geller as lead counsel for the class pursuant to 15 U.S.C. §78u-4(a)(3)(B)(v).

6 **III. STATEMENT OF FACTS**

7 YHOO operates as a digital media company that delivers personalized digital content and
 8 experiences across devices and worldwide. The Company's communications and communities
 9 offerings provide a range of communication and social services to users and small businesses across
 10 various devices and through its broadband Internet access partners. Its search and marketplace
 11 offerings provide answers to users' information needs by delivering meaningful search, local, and
 12 listings experiences on the search results page and across YHOO.

13 The Complaint alleges that defendants issued materially false and misleading statements
 14 regarding the Company's business and financial results during the Class Period. Specifically,
 15 defendants failed to disclose that an important corporate asset in China had been transferred at much
 16 less than market value. As a result of defendants' false statements, YHOO's stock traded at
 17 artificially inflated prices during the Class Period, reaching a high of \$18.65 per share on May 6,
 18 2011.

19 On May 10, 2011, YHOO shareholders learned for the first time that the Company's \$1
 20 billion investment in a strategic partnership with Alibaba Group Holdings Limited ("Alibaba"),
 21 China's largest e-commerce company, was severely impaired by the misappropriation of Alibaba's
 22 most valuable asset, Alipay, an e-commerce payment system, from Alibaba to another private
 23 company controlled by Alibaba's Chairman, Jack Ma.

24 On May 15, 2011, YHOO issued a press release entitled "Joint Statement from Alibaba
 25 Group and Yahoo! Inc. Regarding Alipay," which stated in part:

26 "Alibaba Group, and its major stockholders Yahoo! Inc. and Softbank
 27 Corporation, are engaged in and committed to productive negotiations to resolve the
 outstanding issues related to Alipay in a manner that serves the interests of all
 shareholders as soon as possible."

1 On this news, YHOO's stock fell \$0.74 per share to close at \$15.81 per share on May 16,
 2 2011 – a decline of 15% from its Class Period high of \$18.65 per share.

3 According to news reports, Alibaba received only \$46 million for Alipay's assets, which
 4 securities analysts valued at between \$5 and \$15 billion. The true facts, which were known by the
 5 defendants but concealed from the investing public during the Class Period, were as follows: YHOO
 6 management had been informed on March 31, 2011, at the latest, that Alipay's structure had been
 7 shifted from Alibaba, reducing the value of YHOO's investment in Alibaba by billions of dollars;
 8 and Chinese regulations regarding foreign ownership had been anticipated to change as far back as
 9 2009, which would require YHOO or Alibaba to divest themselves of Alipay, but YHOO had failed
 10 to develop a strategy to recover the value it had in Alibaba.

11 YHOO's stock traded at artificially inflated levels during the Class Period because of
 12 defendants' false statements. As the truth began to leak into the market, YHOO's artificially inflated
 13 stock declined by 15% (and has continued to decline). These revelations, and the elimination of the
 14 artificial inflation from YHOO's stock price, caused real economic loss to investors who purchased
 15 YHOO common stock at artificially inflated prices during the Class Period.

16 **IV. ARGUMENT**

17 **A. The Pension Trust Fund Should Be Appointed Lead Plaintiff**

18 The PSLRA establishes the procedure for the appointment of a lead plaintiff in "each private
 19 action arising under [the 1934 Act] that is brought as a plaintiff class action pursuant to the Federal
 20 Rules of Civil Procedure." 15 U.S.C. §78u-4(a)(1); *see also* 15 U.S.C. §78u-4(a)(3)(B)(i). First, the
 21 pendency of the action must be publicized in a widely circulated national business-oriented
 22 publication or wire service not later than 20 days after filing of the first complaint. 15 U.S.C. §78u-
 23 4(a)(3)(A)(i). Next, the PSLRA provides that the Court shall adopt a presumption that the most
 24 adequate plaintiff is the person or group of persons that –

25 (aa) has either filed the complaint or made a motion in response to a notice . . .;

26 (bb) in the determination of the court, has the largest financial interest in the relief
 sought by the class; and

27 (cc) otherwise satisfies the requirements of Rule 23 of the Federal Rules of Civil
 Procedure.

1 15 U.S.C. §78u-4(a)(3)(B)(iii); *see also In re Cavanaugh*, 306 F.3d 726 (9th Cir. 2002). The
 2 Pension Trust Fund meets each of these requirements and should therefore be appointed as lead
 3 plaintiff.

4 **1. This Motion Is Timely**

5 The notice published in this action on June 6, 2011 advised class members of: (1) the
 6 pendency of the action; (2) the claims asserted therein; (3) the proposed class period; and (4) the
 7 right to move the Court to be appointed as lead plaintiff within 60 days from June 6, 2011, or August
 8 5, 2011. *See* Myers Decl., Ex. A. Because this motion is timely filed, the Pension Trust Fund is
 9 entitled to be considered for appointment as lead plaintiff.

10 **2. The Pension Trust Fund Has the Largest Financial Interest in
 11 the Relief Sought by the Class**

12 During the Class Period, the Pension Trust Fund expended more than \$5.5 million
 13 purchasing almost 300,000 shares of YHOO stock at artificially inflated prices as high as \$18.69 per
 14 share and suffered harm of more than \$700,000 as the price of YHOO stock fell to \$15.81 on May
 15 16, 2011. *See* Myers Decl., Ex. B. To the best of its counsel's knowledge, there are no other
 16 plaintiffs with a larger financial interest. Therefore, the Pension Trust Fund satisfies the PSLRA's
 17 prerequisite of having the largest financial interest.

18 **3. The Pension Trust Fund Otherwise Satisfies Rule 23 of the
 19 Federal Rules of Civil Procedure**

20 In addition to possessing a significant financial interest, a lead plaintiff must also "otherwise
 21 satisf[y] the requirements of Rule 23 of the Federal Rules of Civil Procedure." 15 U.S.C. §78u-
 22 4(a)(3)(B)(ii)(I)(cc). Rule 23 of the Federal Rules of Civil Procedure requires that "the claims or
 23 defenses of the representative parties are typical of the claims or defenses of the class; and [that] the
 24 representative parties will fairly and adequately protect the interests of the class." Fed. R. Civ. P.
 25 23(a)(3)-(4); *Cavanaugh*, 306 F.3d at 730 (focusing "in particular" on typicality and adequacy at the
 26 lead plaintiff stage). The test of typicality "is whether other members have the same or similar
 27 injury, whether the action is based on conduct which is not unique to the named plaintiffs, and
 28 whether other class members have been injured by the same course of conduct." *Hanon v.*

1 *Dataproducts Corp.*, 976 F.2d 497, 508 (9th Cir. 1992) (citation omitted). The adequacy
 2 requirement is met if no conflicts exist between the representative and class interests and the
 3 representative's attorneys are qualified, experienced and generally able to conduct the litigation.
 4 Fed. R. Civ. P. 23(a)(4); *Staton v. Boeing Co.*, 327 F.3d 938, 957 (9th Cir. 2003). The Pension Trust
 5 Fund satisfies these requirements at this stage of the litigation.

6 The Pension Trust Fund has submitted a sworn certification confirming its desire, willingness
 7 and ability to serve as lead plaintiff. *See* Myers Decl., Ex. B; *see also* Local Rule 3-7(c). Like all
 8 class members, the Pension Trust Fund purchased YHOO stock during the Class Period at allegedly
 9 inflated prices and suffered damages when defendants' misconduct came to light. The Pension Trust
 10 Fund's substantial financial interest indicates that it has the incentive to represent the claims of the
 11 class vigorously. *Id.* Moreover, the Pension Trust Fund is not subject to unique defenses and is not
 12 aware of any conflicts between its claims and those asserted by the class. Finally, as discussed
 13 below, the Pension Trust Fund has selected qualified counsel experienced in securities litigation.

14 The Pension Trust Fund's common interests shared with the class, its substantial financial
 15 interest and its selection of qualified counsel demonstrates that the Pension Trust Fund *prima facie*
 16 satisfies the Rule 23 inquiry at this juncture.

17 **B. The Court Should Approve the Pension Trust Fund's Selection of Counsel**

18 The PSLRA vests authority in the lead plaintiff to select and retain lead counsel, subject to
 19 the Court's approval. *See* 15 U.S.C. §78u-4(a)(3)(B)(v). The Court should not disturb the lead
 20 plaintiff's choice of counsel unless it is necessary to "protect the interests of the class." 15 U.S.C.
 21 §78u-4(a)(3)(B)(iii)(II)(aa); *see also Cavanaugh*, 306 F.3d at 732-33; *In re Cohen*, 586 F.3d 703 (9th
 22 Cir. 2009).

23 Robbins Geller, a 180-lawyer firm with offices nationwide, is actively engaged in complex
 24 litigation, particularly securities litigation. *See* Myers Decl., Ex. C. District courts throughout the
 25 country, including this Court, have noted Robbins Geller's reputation for excellence, which has
 26 resulted in the appointment of Robbins Geller attorneys to lead roles in hundreds of complex class
 27 action securities cases. *See, e.g., Eichenholtz v. Verifone Holdings, Inc.*, 2008 U.S. Dist. LEXIS
 28

1 64633, at *39 (N.D. Cal. 2008) (Patel, J.) (finding Robbins Geller lawyers “to be qualified,
 2 experienced, and competent to pursue the class’ claims”); *In re Enron Corp. Sec.*, 586 F. Supp. 2d
 3 732, 797 (S.D. Tex. 2008) (Harmon, J.) (commenting that the “experience, ability, and reputation of
 4 the attorneys of [Robbins Geller] is not disputed; it is one of the most successful law firms in
 5 securities class actions, if not the preeminent one, in the country”). As such, the Court may be
 6 assured that in the event this Motion is granted, the members of the class will receive the highest
 7 caliber of legal representation available from Robbins Geller. Accordingly, the Pension Trust
 8 Fund’s selection of counsel should be approved.

9 **V. CONCLUSION**

10 The Pension Trust Fund has satisfied each of the PSLRA’s requirements for appointment as
 11 lead plaintiff. As such, the Pension Trust Fund respectfully requests that the Court appoint it as Lead
 12 Plaintiff, approve its selection of counsel and grant such other relief as the Court may deem just and
 13 proper.

14 DATED: August 5, 2011

Respectfully submitted,

15 ROBBINS GELLER RUDMAN
 & DOWD LLP
 16 DARREN J. ROBBINS
 DANIELLE S. MYERS

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27 [Proposed] Lead Counsel for Plaintiff

1 CERTIFICATE OF SERVICE

2 I hereby certify that on August 5, 2011, I authorized the electronic filing of the foregoing
3 with the Clerk of the Court using the CM/ECF system which will send notification of such filing to
4 the e-mail addresses denoted on the attached Electronic Mail Notice List, and I hereby certify that I
5 caused to be mailed the foregoing document or paper via the United States Postal Service to the non-
6 CM/ECF participants indicated on the attached Manual Notice List.

7 I certify under penalty of perjury under the laws of the United States of America that the
8 foregoing is true and correct. Executed on August 5, 2011.

9 s/ DANIELLE S. MYERS
10 DANIELLE S. MYERS

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Mailing Information for a Case 3:11-cv-02732-CRB

Electronic Mail Notice List

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Manual Notice List

The following is the list of attorneys who are **not** on the list to receive e-mail notices for this case (who therefore require manual noticing). You may wish to use your mouse to select and copy this list into your word processing program in order to create notices or labels for these recipients.

- (No manual recipients)